

**CITY OF KINGSTON**  
Laws & Rules Committee  
Tentative Agenda - April 19, 2016

Lynn Eckert, W1 Chair  
Bill Carey W5, Mary Ann Mills W7, Deborah Brown W9, Doug Koop W2

1. Proposed Shooting Range
2. Commissioner of Deeds - Jeremey Blaber letter requesting appointment
3. Best Value Local Law

15  
14

**Winnie, Carly**

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**From:** Mair <mmills1299@aol.com>  
**Sent:** Monday, March 28, 2016 9:09 AM  
**To:** Noble, James; Jim Noble  
**Cc:** Maryann Mills; Winnie, Carly  
**Subject:** Committees

Jim

Please add the indoor shooting range topic to the appropriate committee for April.

Thank you

Maryann

Sent from my iPad

## Winnie, Carly

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**From:** Jnoble <jnoble39@aol.com>  
**Sent:** Sunday, April 17, 2016 8:46 PM  
**To:** Winnie, Carly  
**Subject:** Fwd: Amendment to Code

Please add to the Laws & Rules Committee. Thank you Jim

Sent from my iPhone

Begin forwarded message:

**From:** Deborah Brown <djbrown72@hotmail.com>  
**Date:** April 15, 2016 at 9:10:12 PM EDT  
**To:** jim noble <jnoble39@aol.com>, "jnoble@kingston-ny.gov" <jnoble@kingston-ny.gov>  
**Cc:** "kbryant@kingston-ny.gov" <kbryant@kingston-ny.gov>  
**Subject:** Amendment to Code

To Jim Noble: Alderman- at- Large

I am requesting that the Common Council amend current Chapter 223 section 223-3 of the Code of the City of Kingston by adding to the end thereof the following language:

No person, other than in self defense or in the discharge of official duties, shall willfully discharge any species of firearms within the city limits of the City of Kingston, New York except in an indoor facility designed and constructed as a shooting range, pursuant to a site plan approved by the City of Kingston Planning Board and operated in compliance with the laws and regulations of the New York State Department of Environmental Conservation and the Division of Safety and Health of the New York department of Labor.

Please send this to the Laws and Rules Committee.

Thank you.

Debbie Brown  
Aldерwoman, Ward 9  
Minority Leader

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April 12, 2016

City of Kingston Planning Board  
Mr. Wayne Platte, Chairman  
Town Hall  
420 Broadway  
Kingston, New York 12401

**VIA E-MAIL & REGULAR MAIL**

RE: Application of Safeshoot, LLC for an Indoor Shooting  
Range: Memorandum in Address of Local Law #3 of 1984

Dear Chairman Platte and Board Members:

I have been requested by the City Counsel's Office to set forth the legal reasoning which would support the continuation of the above referenced Application before the City of Kingston Planning Board in light of the wording set forth within Local Law Number 3 of 1984.

As you know, the current Application has been granted Lot Line Revision Approval and is presently being held in abeyance as to continuing Site Plan review for retail store and commercial recreation uses pursuant to the City of Kingston Zoning Law. In this regard, your writer emphasizes that the temporary cessation of Application activities has been voluntarily imposed and, as such, is not meant to be interpreted as acceding to any official determination by the City of Kingston.

A) Question Presented: The question presented is whether the following statutory language, as set forth within Local Law #3 of 1984, prohibits the planned shooting range from obtaining Site Plan Approval from the City of Kingston Planning Board?

It is submitted that the answer to this question is to be answered in the negative for the following reasons.

B) Statutory Language: The statutory language at issue reads in relevant part as follows:

"Section 223



### Discharge Restricted

No person, other than in self-defense or in the discharge of official duties, shall willfully discharge any species of firearm within the city limits or the City of Kingston, New York".

#### 1) Pre-emption.

A municipality possesses the regulatory authority to enact Local Laws which protect the health, safety and welfare of the public, including the regulation of firearms. However, these regulations must be reasonable and the same may not be inconsistent with superseding New York State Law.

Section 265.35(3) of the Penal Law of New York State is a statewide general statutory directive which governs the discharge of firearms in a "public place" or any place where there is any person to be endangered thereby". Said statutory authority reads in pertinent part as follows:

"Any person who, otherwise than in self-defense or in the discharge of official duty, (a) willfully discharges any species of firearms, air-gun or other weapon, or throws any other deadly missile, either in a public place, or in any place where there is any person to be endangered thereby, or, in Putnam County, within one-quarter mile of any occupied school building other than under supervised instruction by properly authorized instructors although no injury to any person ensues; (b) intentionally, without malice, points or aims any firearm or any other gun, the propelling force of which is gunpowder, at or toward any other person; (c) discharges, without injury to any other person, firearms or any other guns, the propelling force of which is gunpowder, while intentionally without malice, aimed at or toward any person; or (d) maims or injures any other person by the discharge of any firearm or any other gun, the propelling force of which is gunpowder, pointed or aimed intentionally, but without malice, at any such person, is guilty of a class A misdemeanor."

Cities derive authority to act beyond the specific statutory authorizations found within the General City Law of New York State to pass Local Laws pursuant to the Municipal Home Rule Law of New York State Kamhi v. Town of Yorktown, 74 NY2d423 (1989), see also, Municipal Home Rule Law, Section 10 and its specific supersession procedural/substantive requirements.

Through the "police power" inherent under the Municipal Home Rule Law, cities may, "within narrow confines," adjust provisions of the General City Law so that in its local application, it will have, "exactly the effect intended by the legislature under a local law," Kamhi, supra, at p.434. However, a city may not supersede the New York State Penal Law, as such Law exists as a state-wide General Statutory scheme.

The power derived from the Municipal Home Rule Law to amend or supersede New York State Law "can be exercised only upon substantial adherence to the procedures set forth in Municipal Home Rule Law and Section 22(2) of the Municipal Home Rule Law" Kamhi, supra, states that, "[n]o local law shall supersede any provision of a state statute except as authorized by the constitution, this chapter or any other state statute." Additionally, New York's preemption doctrine places limits on the home rule powers of a municipal entity. Albany Area Builders Association v. Town of Guilderland, 74 NY2d 372 (1989).

New York's body of case law regarding preemption would seem to dictate that even if the City of Kingston had passed the substantive and procedural hurdles of the Municipal Home Rule Law in enacting Local Law #3 in 1984, the attempt to lawfully supersede Sections 205.35(3) of the New York State Penal Law would nonetheless be illegal.

The preemption doctrine is a limit on home rule powers and it stands for "the untrammelled primacy of the Legislature to act ... with respect to matters of State concern." Wambat Realty Corp v. State of New York, 41 NY2d 490 (1977). Preemption applies in cases of express conflict between Local Law and State Law, as well as instances where the State has evidenced its intention to "occupy the field". Wambat, supra, see also, Section 400 of the Penal Law of New York State as to regulation of "Firearms".

Based upon the foregoing, there is no authority for the City of Kingston to attempt to completely abrogate and

eliminate the power of New York State to regulate the sale and use of firearms pursuant to Sections 265.35(3) and 400 of the New York State Penal Law.

2) Statute of Limitations.

The Safeshoot, LLC Application was forwarded to the City of Kingston Planning Board and former City of Kingston Code Enforcement Officer, on or about September 23, 2015 for consideration. Thereafter, the Application was certified as complete by Ms. Sue Cahill, Planning Director, pursuant to Section 405-30(D) of the City of Kingston Zoning Law.

As a procedural consideration, any Appeal of the then Code Enforcement Officer's determination to permit the Application to proceed and the Planning Director's Certification is required to be taken within sixty (60) days of the date the project was determined complete under the City of Kingston Zoning Law [see Section 81-a(5)(b) of the General City Law, and Section 405-30(D)(4) of the City of Kingston Zoning Law].

Accordingly, the 60 day limitations period, as proscribed by statute, is long over. Iacone v. Building Department of Oyster Bay Cove Village, 32 AD3d 1026 (2006). Moreover, the then City of Kingston City Counsel's Office had ample notice of the pending Application and permitted the administrative review to continue. Spandorf v. Building Inspector v. Incorporated Village of East Hills, 193 AD2d 682 (1993), Cave v. Zoning Board of Appeals of the Village of Fredonia, 49 AD2d 228 (1975), lv. den. 38 NY2d 710 (1976).

Therefore, if the City of Kingston or an aggrieved person possessing standing to challenge the administrative determination to permit the Application to proceed had done so, an Appeal could have been timely commenced. Pansa v. Damiano, 14 NY2d 356 (1964). As such, an exhaustion of administrative remedies by said appellants did not timely occur, as required by law. Lehigh Portland Cement Company v. New York State Department of Environmental Conservation, 87 NY2d 136 (1995).

The doctrine of exhaustion of administrative remedies seeks to protect the integrity of the administrative record, as well as the participant's reliance thereon. Therefore at present, it would be untimely for the current Code Enforcement Officer to alter, limit or

withdraw from the previous completeness determination at this late date. Friends of Woodstock v. Town of Woodstock Planning Board, 152 AD2d 876 (3<sup>rd</sup> Dept. 1989), 340 West LLC v. Spring Street Garage Condominium, 31 Misc3d 1230 (2011).

3) Administrative Res Judicata.

Any change of position upon the administrative determination which was previously made by a former City Official is further prohibited under the doctrine of administrative res judicata; which bars a party from retroactively seeking different relief from an administrative agency as has been previously and finally determined. Jensen v. Zoning Board of Appeals of the Village of Hastings-on-the-Hudson, 130 AD2d 549 (1987), lv. den. 70 NY2d 611 (1987), Waylonis v. Baum, 281 AD2d 636 (2001), Kreisberg v. Scheyer, 11 Misc3d 818 (2006).

In this instance, the Code Enforcement Officer was vested by law to determine a question presented and said question, long ago, became final with my client relying thereupon. Therefore, administrative res judicata operates as a conclusive bar to subsequent adjudication at the administrative level. Jones v. Young, 257 AD 563 (3<sup>rd</sup> Dept, 1939), Goodkind v. WFS Investors Corp, 192 AD2d 694 (1993).

4) Statutory Ambiguity.

Local Laws are in derogation of common law and as such, are to be strictly construed against the municipality and in favor of the property owner or contract vendee in the event of any ambiguity Nicklin Mckay v. Town of Marlborough Planning Board, 14 AD3d 858 (3<sup>rd</sup> Dept, 2005).

In the instant matter, the operative words of Local Law #3 state, "other than in self defense". This phrase does not read, "in the act of self defense" [emphasis supplied].

It is clear that the persons who are planning to frequent the Safeshoot premises will be practicing shooting in a furtherance of self defense. In fact, my client plans to have each shooting participant sign a statement that they are utilizing the Safeshoot premises, at least in part, for self defense practices.

Admittedly, the wording, "in the practice of self defense" would make this particular statute clearer. However, it is the municipalities patent responsibility to make statutes understandable and clear. Accordingly, Local Law #3 cannot be extended by implication to prohibit a permitted commercial/recreational use and its interpretation must be limited to what is clearly proscribed. Offshore Restaurant Corp. v Linden, 30 NY2d 160 (1972); FGL&L Property Corp. v. City of Rye, 66 NY2d 111 (1985).

Even under a commonly understood definition the term self defense carries with it a plain meaning which includes practice as an affirmative form of self defense. To wit;

Merriam Webster Dictionary defines the term "self defense" as follows:

"Self Defense:

1. The act of defending yourself, your property, etc.
2. Skills that make you capable of protecting yourself during an attack. [Search Source: Wikipedia]."

Moreover, Local Law #3 is vague on its face as it is impossible to know what it meant by the phrase, "in the discharge of official duties..." Rhetorically speaking, what exactly does this passage mean to regulate? Is it in address of law enforcement personnel only? Does it purport to permit non law enforcement individuals to practice shooting in order to protect their businesses, homes and persons as part of their "official duties" as a business owner, employee, spouse or family member? What constitutes official duties anyway? The term is not defined within Local Law #3 and as a result, it is impossible to determine what is meant by the statute.

In order to survive a vagueness challenge in New York State a statute must undergo a two-part analysis. First, the law must provide clear and sufficient notice of what conduct or use is prohibited; and second, the law must not be written in such a manner as to permit or encourage arbitrary and discriminatory enforcement. People v. Bright, 71 NY2d 376 (1988), Carpinelli v. City of Kingston, 175 Ad2d 509 (3<sup>rd</sup> Dept, 1991). Local Law #3 completely fails under the foregoing test.

Any reasonable reading of Local Law #3 results in the inescapable conclusion that the passage grants unfettered

discretion to the City of Kingston to interpret what constitutes the "discharge of official duties". Therefore, the statute is void as a matter of law. Grayned v. City of Rochford, 408 US 104 (1972).

5) Local Law Context/Constitutionality.

The City of Kingston Planning Board has been provided with testimony and documentation of record which references the following remembrances by certain local citizens within the context of Local Law #3:

- a) At least two indoor shooting ranges located at the Kingston Armory and the Andy Murphy Midtown Neighborhood Center were in existence when Local Law #3 was enacted.
- b) The stated purpose of the Local Law has been expressed as an attempt at prohibiting the shooting of waterfowl proximate to the Hudson River [see the Kingston Freeman October 15, 2015 article which was circulated to the Planning Board].
- c) There was no exception built into the law for the existing shooting ranges and this, at least anecdotally, leads one to surmise that the prohibited discharge of firearms was meant to apply to the outdoors.
- d) There is a dearth of Legislative History concerning Local Law #3 and the purposes of its enactment.
- e) Within the, "city limits of the City of Kingston", as stated within Local Law #3, was not meant to place a prohibition upon what persons may forward as part of a regulated shooting range on private property.

In light of the examination herein and specifically, subparagraph (e) above, it is submitted that an interpretation of Local Law #3 which purports to prohibit the discharge of firearms by licensed gun owners within the planned Safeshoot indoor shooting range, as a categorical ban, constitutes an unconstitutional regulation by way of violation of the 2<sup>nd</sup> Amendment to the Constitution of the United States. District of Columbia v. Heller, 554 US 570 (2008).

The United States Supreme Court's recognition of the peoples right to keep and bear arms for self-defense has further been extended to afford protection against local government infringement by operation of the 14<sup>th</sup> Amendment to the United States Constitution, McDonald v. City of Chicago, 561 US 742 (2010).

Under the Heller analysis, the framework for examination of a 2<sup>nd</sup> Amendment challenge involves a two-fold consideration:

- a) A threshold inquiry into whether the regulated activity is protected by the 2<sup>nd</sup> Amendment, and,
- b) If so, the level of scrutiny applicable to the governments stated justifications for regulating activity must be considered as stricter than a rational basis review in light of the public benefits the regulation seeks to achieve, Heller at 582.

Therefore, the breadth and burden of a challenged 2<sup>nd</sup> Amendment restriction is not merely based upon the activity affected, but in addition, who is affected. In the instant case, the law abiding population of the entire United States is to be prohibited from discharging a firearm within the City of Kingston [see Local Law #3 statutory address as set forth herein]. Moore v. Madigan, 702 F3d 933 (7<sup>th</sup> Cir. 2012), aff'd in part, Case #1:10-CV-05135, US District Ct., Illinois (2014), Kendall, J.

In this regard, owing to the constitutional effects involved, the burden falls upon the government to justify that Local Law #3 is not facially invalid. Therefore, although the shooting range use is permitted under the City of Kingston Zoning Law upon the lands of my client, subject to proper administrative review, the application of facts precedent to site plan approval may be found to be irrelevant to the issue of constitutionality, Ezell, at 697.

In light of all of the foregoing, the 2<sup>nd</sup> Amendment protections afforded to my client and the public at large in the pursuit of self defense and a lawful business enterprise are not merely precatory and the same are buttressed by the following immutable facts:

- i) The purported ban on shooting ranges within the City of Kingston is total.



- ii) The foregoing regulations apply to the entire population of the United States.
- iii) There is no credible legislative history which justifies Local Law #3.
- iv) There is no statutory rationale whatsoever within Local Law #3 which would provide a strict scrutiny basis for the total prohibitions which are being forwarded by certain members of the public on 2<sup>nd</sup> Amendment protections.
- v) If followed, Local Law #3 would preclude the public from participating in firearms training anywhere within the City of Kingston, therefore also infringing on gun education. Ezell, Supra, Kleindienst v. Mandel, 408 US 753 (1972).

The required analysis pursuant to the Heller case and its progeny leads to the inescapable legal conclusion that Local Law #3 is invalid on its face as a matter of law. Therefore, any application of Local Law #3 as against my client would be a constitutional violation of the 2<sup>nd</sup> Amendment which could subject the taxpayers of the City of Kingston to substantial costs and liability. Town of Orangetown v. Magee, 88 NY2d 41 (1996).

#### 6) Conclusion.

For all of the foregoing reasons, Local Law #3 cannot be utilized to prohibit the planned shooting range as proposed by Safeshoot, LLC. In this regard, the above analysis reveals the 1984 Law is incompletely written, devoid of any Legislative History and subject to multiple interpretations based upon its employment of vague and ambiguous terms which render it void as a matter of law.

In addition, it is important to note that the current City of Kingston Administration inherited the infirm procedural record. However, the above recited prohibitions at law to post-hoc and untimely enforcement of this Local Law should be observed.

Moreover, New York State Law dictates that Local Law #3 is superseded by a statewide general statutory scheme, as well as constitutional principles governing activities of citizens which cannot be lawfully prohibited on private property under the substantive protections afforded by the 2<sup>nd</sup> Amendment to the United States Constitution.

Finally, my client agrees to cooperate with City of Kingston Common Council efforts to Amend Local Law #3 pursuant



to Section 20 of the General City Law of New York and the Charter of the City of Kingston; if such efforts are ultimately forwarded. In light of all of the foregoing, said cooperation is being made with the express caveat that all of the foregoing procedural and substantive reasoning is hereby reserved for my client upon the administrative and legislative records.

The Safeshoot Project is critically important to the economic well being of the City of Kingston and will provide revenue, employment and a safe place for self defense related firearms shooting for duly licensed members of the public. Based upon all of the above, the Safeshoot, LLC Application should be permitted to lawfully proceed before the City of Kingston Planning Board.

Should you have any questions, do not hesitate to contact me.

Very truly yours,



Michael A. Moriello

MAM:tew

cc: Safeshoot, LLC  
Scott Dutton, RA  
Kevin Bryant, Esq.  
Daniel Gartenstein, Esq.  
Mayor Steven Noble  
Ms. Suzanne Cahill  
City of Kingston Common Council  
Mr. Joseph Saffert  
Mr. Thomas Tiano

## Executive

CONSOLIDATED (/LEGISLATION/LAWS/#CONSOLIDATED)

/ EXECUTIVE (/LEGISLATION/LAWS/EXC/-CH18/) / ARTICLE 6 (/LEGISLATION/LAWS/EXC/A6/)  
/ SECTION 139

§ 139. Commissioners of deeds within the state. 1. Commissioners of deeds in the cities of this state shall be appointed by the common councils of such cities respectively, and shall hold office for the term of two years from the date of their appointment, and until others are appointed in their places. A vacancy occurring during the term for which any commissioner shall be appointed, shall be filled by the common council. The common council of the several cities of this state, except in cities of this state situate in a county which has a population of not less than one hundred and eighty thousand, and not more than six hundred and fifty thousand, according to the last state or federal enumeration, shall at the end of every even numbered year, by resolution of the board, determine the number of commissioners of deeds to be appointed for such cities respectively.

2. The term of office of each commissioner of deeds appointed by the common council in cities of this state situate in a county which has a population of not less than one hundred and eighty thousand, and not more than six hundred and fifty thousand, according to the last state or federal enumeration, shall expire on the thirty-first of December of the even numbered year next after he shall be appointed. The common council of any such city shall in the month of November in every even numbered year, by resolution, determine the number of commissioners of deeds to be appointed in such cities, respectively, for the next succeeding two years.

3. Any person who resides in or maintains an office or other place of business in any such city and who resides in the county in which said city is situated shall be eligible to appointment. Such commissioners of deeds may be appointed by the common council by resolution, and the city clerk shall immediately after such appointment, file a certificate thereof with the county clerk of the county in

which such city is situate, specifying the term for which the said commissioners of deeds shall have been appointed; the county clerk shall thereupon notify such persons of their appointment, and such persons so appointed shall qualify by filing with him his oath of office, duly executed before such county clerk or before any person authorized to administer an oath, together with his official signature, within thirty days from the date of such notice.

4. The county clerk shall make a proper index of certificates of appointment and official signatures filed with him. For filing and indexing the certificate of appointment and official signature, the county clerk shall be paid a fee of one dollar by the appointee, which fee shall include the administration of the oath by the county clerk, should he administer the same.

5. If a person appointed commissioner of deeds shall not file his oath of office as such commissioner of deeds, in the office of the clerk of the county of his residence, within thirty days after the notice of his appointment as above provided, his appointment is deemed revoked and the fee filed with his application forfeited.

6. A commissioner of deeds may file his autograph signature and certificate of appointment in the office of any county clerk, and the county clerk of the county in which such city is located, upon request of any commissioner appointed under the provisions of this section and upon payment of twenty-five cents for each certificate, must make and deliver to such commissioner such number of certificates as may be required. Such certificates shall be issued under the hand and seal of the county clerk of the county in which such city is located, showing the appointment and term of office of such commissioner and stating the county in which he resides. Such a certificate may be filed in the office of any county clerk upon the payment of one dollar for such filing in each office. The clerks of the counties outside the city of New York, shall each keep a book or card index file in which shall be registered the signature of the commissioners so filing such certificates.

7. The county clerk of the county in which said city is located shall, upon demand and upon payment of the sum of fifty cents, authenticate a certificate of acknowledgment or proof of oath taken before such commissioner of deeds within such city, by subjoining or attaching to the original certificate of acknowledgment or proof of oath a certificate under his hand and official seal

specifying that at the time of taking the acknowledgment or proof of oath the officer taking it was duly authorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature on the certificate of acknowledgment or proof of oath with the autograph signature deposited in his office by such officer, and that he verily believes the signature is genuine.

8. Any instrument or paper sworn to, proved or acknowledged before a commissioner of deeds within a city and authenticated as hereinbefore provided by the clerk of a county within which such city is located shall be recorded and read in evidence in any county in this state without further proof; provided, however, that a county clerk's certificate of authentication shall not be necessary to entitle any deed or other instrument or paper so proved or acknowledged to be recorded in any office where such commissioner has filed his autograph signature and certificate of appointment or to be read in evidence in any county in which such commissioner has filed with the county clerk his autograph signature and certificate of appointment, as herein provided.

9. The foregoing provisions of this section shall not apply in the city of New York.

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< SECTION 138 - POWERS OF NOTARIES PUBLIC OR OTHER OFFICERS WHO ARE STOCKHOLDERS, DIRECTORS, OFFICERS OR EMPLOYEES OF A CORPORATION (/LEGISLATION/LAWS/EXC/138/)

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## Executive

CONSOLIDATED (/LEGISLATION/LAWS/#CONSOLIDATED)

/ EXECUTIVE (/LEGISLATION/LAWS/EXC/-CH18/) / ARTICLE 6 (/LEGISLATION/LAWS/EXC/A6/)

/ SECTION 142

§ 142. Powers of such commissioners. Every such commissioner shall have authority, within the city, county, municipality or other political subdivision for which he is appointed, and in the manner in which such acts are performed by authorized officers within the state:

1. To take the acknowledgment or proof of the execution of a written instrument, except a bill of exchange, promissory note or will, to be read in evidence or recorded in this state.
2. To administer oaths.
3. If such commissioner is also an attorney at law regularly admitted to practice in this state, in his discretion, to the extent authorized by this section, to administer an oath to or take the acknowledgment of or proof of the execution of an instrument by his client with respect to any matter, claim, action or proceeding.
4. If appointed for a foreign country, to certify to the existence of a patent, record or other document recorded in a public office or under official custody in such foreign country, and to the correctness of a copy of such patent, record or document, or to the correctness of a copy of a certified copy of such patent, record or other document, which has been certified according to the form in use in such foreign country.
5. A written instrument acknowledged or proved, an oath administered, or a copy or a copy of a certified copy of a patent, record or other document certified, as heretofore provided in this section, may be read in evidence or recorded within

this state, the same as if taken, administered or certified within the state before an officer authorized to take the acknowledgment or proof of a written instrument, to administer oaths, or to certify to the correctness of a public record, if there shall be annexed or subjoined thereto, or indorsed thereon a certificate of the commissioner before whom such acknowledgment or proof was taken, by whom the oath was administered, or by whom the correctness of such copy is certified, under his hand and official seal. Such certificate shall specify the day on which, and the city or other political subdivision, and the state or country or other place in which, the acknowledgment or proof was taken, or the oath administered, without which specification the certificate shall be void. Except as provided in subdivision five of this section, such certificate shall be authenticated by the certificate of the secretary of state annexed or subjoined to the certificate of such commissioner, that such commissioner was, at the time of taking such acknowledgment or proof, of administering such oath, or of certifying to such patent record or document, or copy thereof, duly authorized therefor, that he is acquainted with the handwriting of such commissioner, or has compared the signature upon the certificate with the signature of such commissioner deposited in his office, that he has compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office, and that he believes the signature and the impression of the seal upon such certificate to be genuine. The certificate of a commissioner as to the correctness of a copy of a certified copy of a patent, record or other document, as provided by this section, shall be presumptive evidence that it was certified according to the form in use in such foreign country.

6. A commissioner of deeds appointed pursuant to the preceding section may during his term of office procure from the secretary of state, on payment to him of a fee of two dollars, a certificate of his appointment, prescribed by the secretary of state, stating among other things, the date of his appointment, the date of expiration thereof and the city, county, municipality or other political subdivision for which he is appointed, and containing the signature of the commissioner in his own handwriting and his official seal, and certifying that he has compared the signature on such certificate with the signature of such commissioner deposited in his office, that he has compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office and that he believes the signature and the impression of the seal upon such certificate to be genuine. Such a certificate may

be filed by such commissioner in the office of any county clerk or register in the state upon the payment to such county clerk or register of a fee of two dollars. Upon the filing of such certificate in the office of a county clerk or register in this state, a written instrument acknowledged or proved, an oath administered, or a copy or copy of a certified copy of a patent, record or other document certified, by a commissioner pursuant to this section, shall be entitled to be read in evidence and shall be accepted for filing or recording and filed or recorded, as the case may be, in the office of such county clerk or register, on tender or payment of the lawful fees therefor, without having annexed or subjoined to the certificate of such commissioner contained thereon the authenticating certificate of the secretary of state as required by subdivision five of this section or by subdivision one of section three hundred eleven of the real property law or by any other provision of law.

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< SECTION 141 - COMMISSIONERS OF DEEDS IN OTHER STATES, TERRITORIES AND FOREIGN COUNTRIES (/LEGISLATION/LAWS/EXC/141/)

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## Executive

CONSOLIDATED (/LEGISLATION/LAWS/#CONSOLIDATED)

/ EXECUTIVE (/LEGISLATION/LAWS/EXC-CH18/) / ARTICLE 6 (/LEGISLATION/LAWS/EXC/A6/)

/ SECTION 142-A

§ 142-a. Validity of acts of notaries public and commissioners of deeds notwithstanding certain defects. 1. Except as provided in subdivision three of this section, the official certificates and other acts heretofore or hereafter made or performed of notaries public and commissioners of deeds heretofore or hereafter and prior to the time of their acts appointed or commissioned as such shall not be deemed invalid, impaired or in any manner defective, so far as they may be affected, impaired or questioned by reason of defects described in subdivision two of this section.

2. This section shall apply to the following defects:

(a) ineligibility of the notary public or commissioner of deeds to be appointed or commissioned as such;

(b) misnomer or misspelling of name or other error made in his appointment or commission;

(c) omission of the notary public or commissioner of deeds to take or file his official oath or otherwise qualify;

(d) expiration of his term, commission or appointment;

(e) vacating of his office by change of his residence, by acceptance of another public office, or by other action on his part;

(f) the fact that the action was taken outside the jurisdiction where the notary public or commissioner of deeds was authorized to act.



3. No person shall be entitled to assert the effect of this section to overcome a defect described in subdivision two if he knew of the defect or if the defect was apparent on the face of the certificate of the notary public or commissioner of deeds; provided however, that this subdivision shall not apply after the expiration of six months from the date of the act of the notary public or commissioner of deeds.

4. After the expiration of six months from the date of the official certificate or other act of the commissioner of deeds, subdivision one of this section shall be applicable to a defect consisting in omission of the certificate of a commissioner of deeds to state the date on which and the place in which an act was done, or consisting of an error in such statement.

5. This section does not relieve any notary public or commissioner of deeds from criminal liability imposed by reason of his act, or enlarge the actual authority of any such officer, nor limit any other statute or rule of law by reason of which the act of a notary public or commissioner of deeds, or the record thereof, is valid or is deemed valid in any case.

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< SECTION 142 - POWERS OF SUCH COMMISSIONERS (/LEGISLATION/LAWS/EXC/142/)

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CITY OF WATERTOWN, NEW YORK

OFFICE OF CITY CLERK

CITY HALL, ROOM 101

245 WASHINGTON STREET

WATERTOWN, NEW YORK 13601-3387

(315) 785-7780 Fax (315) 785-7796

Email: asaunders@watertown-ny.gov

Ann M. Saunders  
City Clerk/City Historian

Commissioner of Deeds Application

Full Name of Applicant: \_\_\_\_\_

State of New York  
County of Jefferson  
City of Watertown

} SS:

I, \_\_\_\_\_, being duly sworn, hereby make application for appointment to the office of Commissioner of Deeds in and for the City of Watertown.

I hereby swear that:

1. I am a citizen of the United States, *and*
2. I am over the age of 18 years, *and*
3. Check one

☐ I maintain my fixed and permanent residence at \_\_\_\_\_  
\_\_\_\_\_ (*print address*) in the City of  
Watertown, New York

☐ I maintain an occupation of \_\_\_\_\_ in the  
City of Watertown at \_\_\_\_\_  
\_\_\_\_\_ (*print address*), and I maintain my fixed and  
permanent residence at \_\_\_\_\_  
\_\_\_\_\_ (*print address*) in the County of Jefferson, New York

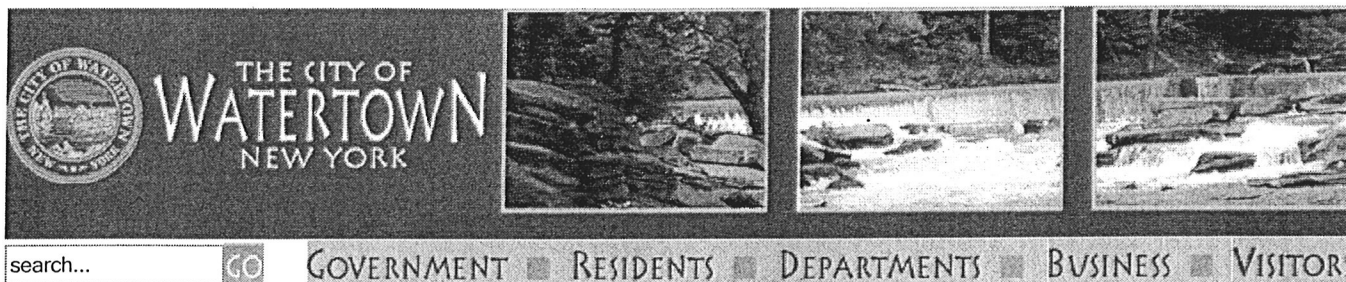
And that all the statements contained in the foregoing application are true.

Signature of Applicant: \_\_\_\_\_

Date: \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public or Commissioner of Deeds



Commissioner of  
Deeds

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## Commissioner of Deeds

Dog Licenses

In order to be eligible for a Commissioner of Deeds, the individual needs to be the following:

Going Out Of  
Business Permit

- A citizen of United States
- Over the age of 18 years
- Reside in the City of Watertown or work in the City of Watertown and reside in the County of Jefferson

Handicapped  
Parking Permits

The term for Commissioner of Deeds is for two years and it expires December 31st of the even years.

Liquor Licenses

Renewal notices will sent prior to the expiration.

Refuse & Recycling  
Haulers Permit

Commissioner of Deeds can only perform the functions authorized by NYS Department of State Executive Law § 142 within the City of Watertown.

Vendor Permits

Please submit a [completed application form](#) along with the fee of \$25 to the City Clerk's Office.

## Codified Rules: Closed to Comments

- [Title 51: City Clerk](#) <sup>[1]</sup> > [Chapter 2: Commissioner of Deeds](#) <sup>[1]</sup>

(a) *Required information.* On each document sworn to, acknowledged, or proved before him, a Commissioner of Deeds must affix, in black ink,

- (1) his signature;
- (2) his printed, typewritten, or stamped name;
- (3) his office title;
- (4) his official number; and
- (5) the date when his term expires.

An example of the form to be followed is:

(signature)

Jane Sample

Commissioner of Deeds, New York City

123456789

Term Expires: (date)

A Commissioner of Deeds must sign the name under which she was appointed; she may use no other. When a Commissioner of Deeds marries during the term of office, the Commissioner must continue to use any pre-marriage surname when signing as a Commissioner of Deeds. However, if the Commissioner wishes to include a new, marriage surname, the Commissioner must use the pre-marriage surname in the Commissioner's signature and printed name, and then add the marriage surname in parentheses after the signature. When the term of office expires, the Commissioner's renewal application may be made either under the pre-marriage or the marriage surname. When the renewal is granted the Commissioner must perform all functions solely under the name used on the renewal application.

A Commissioner of Deeds must immediately notify the Office of the City Clerk concerning any changes of address.

It is optional to have an official stamp or seal.

A Commissioner of Deeds appointed in the City of New York may administer oaths and take acknowledgements or proofs of deeds and other documents in any part of the City of New York.

(b) *Administering oaths and taking acknowledgement or proofs.*

(1) *Oaths.* For the purpose of a Commissioner of Deeds, an oath is a person's verbal pledge that her statements contained in a document are true. An affirmation is the equivalent of an oath and may be administered to anyone who objects to taking an oath as a matter of principle. Oaths and affirmations must be administered in legally acceptable forms. An acceptable form for administering an oath is: "Do you solemnly swear that the contents of the statement made and subscribed by you are true and correct?" An acceptable form for administering an affirmation is: "Do you solemnly, sincerely, and truly, declare and affirm that the statements made and subscribed by you are true and correct?"

When an oath or affirmation is administered, the person swearing or affirming must express assent to the oath or affirmation by the words "I do" or words of like meaning. For an oath or affirmation to be valid, whatever form is used, it is necessary that:

- (i) the person swearing or affirming be personally present before the Commissioner of Deeds;
- (ii) the person unequivocally swears or affirms that what she states is true;
- (iii) the person swears or affirms as of that moment; and
- (iv) the person consciously and conscientiously takes upon herself the obligation of an oath or affirmation.

(2) *Proofs.*

(i) A proof is used in place of an acknowledgement on certain instruments. A proof is a formal declaration by a person who witnessed the signing of an instrument and who himself signed as a subscribing witness, which declaration sets forth:

- (A) the witness' place of residence;
- (B) that the witness knew the individual who is described in and who executed (signed) the instrument; and
- (C) that the witness actually saw the individual sign the instrument.

(ii) As with acknowledgements, there is no prescribed form for taking a proof. For a proof to be valid, the commissioner of deeds must be satisfied that:

- (A) the witness is who she claims to be;
- (B) the witness is stating her correct place of residence;
- (C) the witness does in fact personally know the individual who executed the instrument; and

(D) the witness actually saw the individual execute the instrument. When a proof is taken, the Commissioner of Deeds must place a statement on the document or attached thereto as evidence of her having taken the proof. Whatever form is used, the statement must recite all the matters that were required to be done, known, or proved on the taking of the proof, together with the name, place of residence, and substance of the declaration of the person giving proof. An acceptable form of the statement is:

"On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me came (person's name), to me known to be the individual who subscribed as witness the foregoing instrument and declared that she resides at (house and street), (town or city), (state), that she knows personally (person's name), that she knows the person to be the individual described in and who executed the foregoing instrument, and that (the person) executed the foregoing instrument in her presence."

This statement must be followed by the Commissioner's signature and other information described above.

(3) *Fee.* The fee for administering an oath or taking an acknowledgement or proof is twenty-five cents.

(c) *Authentication.* "Authentication" in this case involves a County Clerk affirming the genuineness of a certificate of acknowledgement, proof, or oath taken before a Commissioner of Deeds.

The significance of authentication is as follows:

When an instrument or paper is sworn to, proved, or acknowledged before a Commissioner of Deeds within the City of New York, it can be recorded and read in evidence in any office of any County Clerk within the City of New York or in the Office of the Register of the City of New York without the need for further proof. However, for such an instrument to be read into evidence, without the need for further proof, anywhere in

New York outside the five boroughs of the City, it is necessary that the instrument first be authenticated by one of the County Clerks in the City of New York.

To permit people to have instruments authenticated, a Commissioner of Deeds may file his autograph signature and certificate of appointment in the office of any County Clerk in New York City. Certificates of appointment may be obtained from the Office of the City Clerk.

**Source URL:** <https://rules.cityofnewyork.us/content/section-2-06-procedures-exercising-powers-commissioner-deeds>

**Links:**

[1] <https://rules.cityofnewyork.us/codified-rules?agency=NYCCL>

# INSTRUCTIONS FOR APPLYING FOR COMMISSIONER OF DEEDS APPOINTMENT

1. Commissioner of Deeds appointments are for a two year period and are not automatically renewed. Applicants must obtain another application form and re-file for reappointment. Applicants for Commissioner of Deeds must live or work in the City of Yonkers.
2. Applicants must complete the application form and forward it to the City Clerk at City Hall, 40 South Broadway, Room 107, Yonkers, New York 10701. Please allow several months for processing.
3. All applicants for Commissioner of Deeds appointments must be approved by the City Council.
4. After receiving City Council approval, the list of applicants will be forwarded to the County Clerk's Office. The County Clerk will contact the applicant about fees and additional paperwork needed to complete the process.

## Application for the Office of Commissioner of Deeds

Actual place of residence: Street, number & Zip Code \_\_\_\_\_ City of Yonkers, New York

Name of Applicant in full \_\_\_\_\_

Occupation \_\_\_\_\_ Any other occupation? \_\_\_\_\_

With or of the firm of \_\_\_\_\_

Line of business \_\_\_\_\_ Business address \_\_\_\_\_

Age \_\_\_\_\_ When and where born \_\_\_\_\_

If naturalized, when and where? \_\_\_\_\_

Are you admitted to the Bar? \_\_\_\_\_ If so, when and where \_\_\_\_\_

Are you associated with any lawyer or firm of lawyers? \_\_\_\_\_ If so, with whom? \_\_\_\_\_

Has your application for appointment as Commissioner of Deeds ever been rejected? \_\_\_\_\_

Have you ever been removed from the office of Notary Public or Commissioner of Deeds? \_\_\_\_\_ Give particulars \_\_\_\_\_

Are you now a Commissioner of Deeds? \_\_\_\_\_ Expiration \_\_\_\_\_

Do you solicit, undertake, or have been paid for the drawing of any legal papers or documents? \_\_\_\_\_  
If so, what sort? \_\_\_\_\_

State of New York,  
County of Westchester, } ss.:  
City of Yonkers, }

The undersigned, who is an applicant for the office of Commissioner of Deeds for the City of Yonkers, New York, having been duly sworn, says that he is a citizen of the United States, a resident of the City of Yonkers, County of Westchester, State of New York, and over the age of twenty-one years, and that all the statements contained in the foregoing application are true.

Subscribed and sworn to before me this \_\_\_\_\_ (Signature of Applicant) \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_  
by the applicant herein, and who is to me  
personally known, \_\_\_\_\_ Commissioner of Deeds  
Notary Public

## RECOMMENDATIONS

Names of persons recommending appointments must be signed personally by them, with occupation and address.

We have known \_\_\_\_\_ the candidate named herein for appointment to the office of Commissioner of Deeds, City of Yonkers, for ( ) ( ) years and we know the applicant to be of good moral character, qualified to perform the duties of Commissioner of Deeds, and we believe that the facts stated in the affidavit as stated above are true.

Address \_\_\_\_\_ Address \_\_\_\_\_



## Commissioner of Deeds Application

Commissioners of Deeds are appointed for a two-year term. The current term is from January 1, 2013 through December 31, 2014. Applicants must be approved in a miscellaneous resolution of the Common Council. **To qualify as a Commissioner of Deeds through this municipality, you must be either a resident of the City of Albany or you must be a resident of the County of Albany and your primary place of employment must be within the City of Albany.**

Meeting Date: \_\_\_\_\_

Primary need or purpose for applying for Commissioner of Deeds status:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_  
\_\_\_\_\_

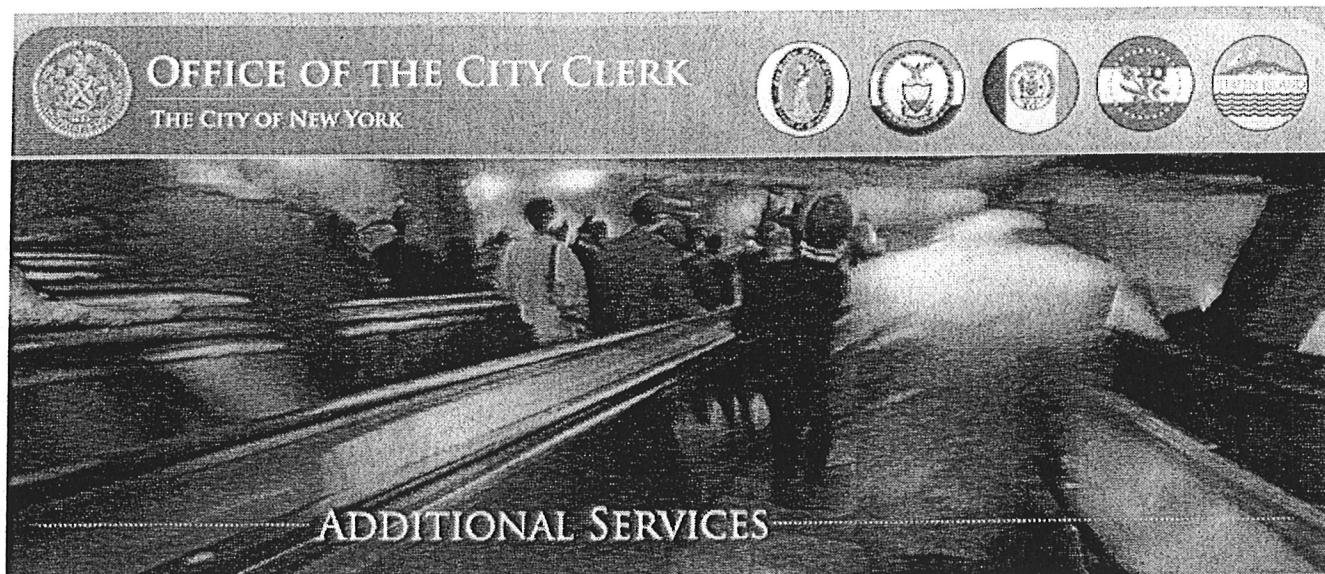
Phone No.: Day: \_\_\_\_\_  
Evening: \_\_\_\_\_

Place of Business: \_\_\_\_\_

Business Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_





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## Commissioner of Deeds

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### [Introduction](#)

A Commissioner of Deeds is a public officer similar to a Notary Public who may administer oaths and take acknowledgements or proofs of deeds and other documents in any part of the City of New York.

#### [Fee](#)

- The fee to apply to become a Commissioner of Deeds is \$26 by credit card or money order payable to the City Clerk.

### [Qualifications to Become a Commissioner of Deeds](#)

- You must be a citizen of the United States of America or legal resident alien.
- You must be a resident of the City of New York or an attorney who maintains an office in the City of New York.
- You must be 18 years of age or older.
- You must not have been removed from the Office of Notary Public or Commissioner of Deeds.
- You must be an attorney, an attorney's employee, someone serving a clerkship in a law office, or someone who is qualified to obtain a Certificate of Fitness from the Office of the City Clerk.

### RESOURCES

- [Online Forms](#)
- [Office Hours and Locations](#)
- [Legal Holidays](#)
- [NYCityMap](#)
- [NYC.gov](#)
- [City Council](#)
- [NYS Joint Commission on Public Ethics](#)
- [NYC CityStore](#)

- You must have proper identification.

#### **Qualifications to Obtain a Certificate of Fitness**

- If you are not an attorney, an attorney's employee, or someone serving a clerkship in a law office, you must obtain a Certificate of Fitness.
- To obtain a Certificate of Fitness, you must:
  - Not have any outstanding tax bills or unpaid traffic tickets,
  - Not have been convicted of any felony or any acts listed in Section 2-02 of the Rules of the City of New York,
  - Have earned a grade of at least 65% on the exam administered by the City Clerk.

#### **Examinations**

You must take an exam to obtain a Certificate of Fitness.

- Exams are offered daily from 8:30 am to 3:30 pm in the Manhattan office.
- Exams are offered on Tuesdays and Thursdays from 8:30 am to 3:30 pm at our Bronx, Brooklyn, Queens, and Staten Island offices.
- You may call 311 in advance for an appointment or walk in to schedule an appointment.
- You may call 311 to request an application and Commissioner of Deeds handbook or pick both up at any of our offices.

#### **Attorneys or Their Employees**

- Attorneys are exempt from any examinations.
- Both attorney employees and law clerks are also exempt upon presentation of affidavits as to their competence and clerkship, respectively.  
[Download a sample affidavit](#)

#### **Appointment by the City Council**

- Once you have paid the fee and met the qualifications to become a Commissioner of Deeds, your application will be forwarded to the City Council for consideration of appointment.
- Upon appointment by the Council you will be notified to return to the City Clerk's Office to take the Oath of Office and receive your certificate.
- Your term of appointment is for a two-year period.

#### **Limitations of the Office of Commissioner of Deeds**

- Once you are appointed Commissioner of Deeds, you may perform official functions solely within the five boroughs of New York City.
- A Commissioner of Deeds cannot certify any document to a transaction in which the Commissioner has a financial interest or take an acknowledgement or proof of the execution of a will.

A Local Law of the City of Kingston, New York Authorizing Best Value Competitive Bidding and Procurement.

## **SECTION I TITLE**

This Local Law shall be known as the "City of Kingston Local Law Authorizing Best Value Competitive Bidding and Procurement."

## **SECTION II LEGISLATIVE INTENT AND PURPOSE**

The intent of this law is to allow the City of Kingston Purchasing Department the option to award certain purchase contracts (including contracts for services) subject to the competitive bidding under Section 103 of the General Municipal Law on the basis of a low bid or "best value" as defined in Section 163 of the New York State Finance Law.

## **SECTION III AUTHORITY**

### **A. Authority and Purpose.**

Section 103 of New York State General Municipal Law allows the City to authorize, by local law, the award of certain purchase contracts (including contracts for services) subject to competitive bidding on the basis of "best value" as defined in Section 163 of the New York State Finance Law. The "best value" option may be used, for example, if it is more cost efficient over time to award the good or service to other than the lowest responsible bidder or offered if factors such as lower cost of maintenance, durability, high quality and longer product life can be documented. Awarding contracts on the basis of best value is further intended to promote competition, foster fairness among vendors and competitors, expedite contract awards and enhance efficiency among responsive and responsible vendors and competitors.

### **B. Award Based on Best Value.**

The Purchasing Department may award purchase contracts, including contracts for services, on the basis of "best value" as the term is defined in New York State Finance law § 163.

### **C. Applicability.**

The provisions of this chapter apply to City purchase contracts, including contracts for services, involving an expenditure of more than \$20,000, but excluding purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the New York Labor Law and any other contract that may in the future be excluded under state law from the best value option. If the dollar thresholds of New York State General Municipal Law § 103 are increased or decreased in the future by the State Legislature, the dollar thresholds set forth herein shall be deemed simultaneously amended to match the new General Municipal Law thresholds.

D. Standard for Best Value.

1. Goods and services procured and awarded on the basis of best value are those that the Purchasing Department determines optimize quality, cost and efficiency, among responsive and responsible bidder or offers.
2. Where possible, the determination shall be based on an objective and quantifiable analysis of clearly described and documented criteria as they apply to the rating of bids or offers.
3. The criteria may include; but shall not be limited to, any or all of the following: cost of maintenance; proximity to the contractors; longer product life; product performance criteria; and quality of craftsmanship.

E. Documentation.

Whenever any contract is awarded on the basis of best value instead of the lowest responsible bidder, the basis for determining best value shall be thoroughly and accurately documented.

**SECTION V SEVERABILITY**

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

**Section VI EFFECTIVE DATE**

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State.